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Supreme Court, U.S.
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No. 05-

In the Supreme Court of the United States

WILLIAM J. PRATER
Petitioner,

v.

DAVID C. ORMISTON JR.
Respondent.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition concerns the statutory construction and application of the cornerstone, and bedrock foundation of the complete bankruptcy system namely 11 § U.S.C. 362.

1. Whether the granting of a discharge in a bankruptcy case pursuant to 11 U.S.C. § 524 terminates the automatic stay of the bankruptcy court (11 U.S.C. § 362) as to property of the estate as defined in 11 U.S.C. § 541?

2. Whether a pro se litigant's complaint should be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) if the complaint liberally construed states a claim upon which relief can be granted?

3. Whether a pro se litigant is entitled to equal consideration and equal access to justice in courts of the United States?

4. Whether the United States District Court and the United States Court of Appeals for the Ninth Circuit correctly interpreted applicable Federal Law in reaching its decision to dismiss Plaintiff's complaint?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William J. Prater respectfully requests and prays that the Supreme Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming a judgment of the United States District Court Eastern District of California in this case.

OPINIONS BELOW

The memorandum of the United States Court of Appeals for the Ninth Circuit was entered on February 16, 2005 and is unpublished (Pet. App. 1a-2a) The order and findings and recommendations of the magistrate judge in the United States District Court Eastern District of California was entered November 16, 2003 (Pet. App. 3a-5a) The order of the United States District Court Eastern District of California granting defendant's motion to dismiss and dismissing the action (Pet. App. 6a-7a).

JURISDICTION

The judgment of Unite States Court of Appeals for the Ninth Circuit was entered on February 16, 2005 (Pet. App.8a) The Court of Appeals denied rehearing *en banc* on April 25, 2005. (Pet. App.-9a) This Court has jurisdiction pursuant to 28 USC 1254 (1)

RELEVANT STATUTORY PROVISIONS

11 USC § 362 in relevant part.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the

Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act create, perfect, or enforce an lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

.....

.....

(c) Except as provided in subsections (d), (e), and (f) of this section ----

(1) The stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of -----

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

11 USC § 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

STATEMENT

This case arises due to the fact that the United States District Court for the Eastern District of California and the United States Court of Appeals for the Ninth Circuit misinterpreted statutes of the United States and made erroneous determinations and rulings which are in conflict with United States Supreme Court and Ninth Circuit precedent, which resulted in a miscarriage of justice, and a perfunctory denial of petitioner's case.

I. REASONS FOR GRANTING THE WRIT

A. Nature of the Case, Course of Proceedings and Disposition of the Case in the United States District Court and the United States Court of Appeals for the Ninth Circuit